IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 204 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DECOM MARKETING LIMITED

Versus

COMMISSIONER OF INCOME-TAX

Appearance:
MR RK PATEL for Petitioner
MR BB NAIK for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 06/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, at the instance of the assessee, the following question is referred for the Assessment Years 1978-79 to 1980-81 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the disallowance of claim of gratuity of Rs.19,115/- for A.Y. 1980-81 u/s. 37 read with Sec. 28 of the I.T. Act, 1961."

2. Mr RK Patel, learned counsel for the assessee and Mr BB Naik, learned counsel for the revenue state that the question referred to hereinabove is squarely covered by the decision of this Court in Innosearch Ltd. vs. Commissioner of Income Tax (Income Tax Reference No. 292 of 1984 decided on 29.4.1999). Following the decision of the Apex Court in Shree Sajjan Mills Ltd. vs. CIT, MP & Anr., 156 ITR 585, it has been held that where the assessee does not set up a separate gratuity fund, the conditions prescribed by Section 40A(7)(b) of the Act are not satisfied and, therefore, the assessee is not entitled to get deduction of the amount of gratuity for future period. Admittedly, in the facts of this case, no such separate fund was set up.

3. In view of the above discussion, the question is answered in the affirmative i.e. in favour of the revenue and against the assessee.

4. The reference is accordingly disposed of. There shall be no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-